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Supreme Court Of The United States

OCTOBER TERM, 1972

No. 72-554

WALTON W. MIMS, individually and as a representative of a class of citizens composed of residents and taxpayers of a common geographical subdivision,

Appellants,

versus

W. G. YARBOROUGH, FRANK COOPER, H. B. KEMP, CRAFTON TIMMERMAN and J. O. BUSSEY, all as members of the Edgefield County Water and Sewer Authority,

Appellees.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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W. G. YARBOROUGH, FRANK COOPER, H. B. KEMP, CRAFTON TIMMERMAN and J. O. BUSSEY, all as members of the Edgefield County Water and Sewer Authority,

Appellees.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Petitioner, Walton W. Mims, by and through undersigned counsel, prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on June 6, 1972; rehearing denied July 6, 1972.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit appears at 461 F. 2d 1266 (U. S. C. A. 4th Cir.) 1972, affirming the Order of the District Court for District of South Carolina, which Order appears at 343 F. Supp. 1146 (D. C. S. C. 1971).

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on June 6, 1972. A timely Petition for rehearing was denied on July 6, 1972, and this Petition for certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

The Edgefield County Water and Sewer Authority was created by Act No. 571 (1967) of the General Assembly of the State of South Carolina, as amended by Act No. 1192 (1970). The question of the creation of this agency by the State of South Carolina is not in issue in this matter. In December of 1967 an engineering firm was hired to develop a plan for water and sewer development in Edgefield County, South Carolina. On January 17, 1969 a Comprehensive Plan for Water and Sewer Development (Defendant's Exhibit B at trial) was presented by the engineers to the Edgefield County Planning Board, and it was approved by that group. Thereafter the engineers prepared and submitted to the Edgefield County Water and Sewer Authority in November 1969 an Engineering Report and General Data—Proposed Water Facilities (Defendant's Exhibit F at trial).

This controversy concerns that proposed routing of the water system as it appears in both the engineering report and the comprehensive plan as being a route which serves the highly urbanized bedroom community

lying in a portion of Aiken County which was included in the service area of the water project by the aforementioned State Act, and which serves the three major cities in Edgefield County: Trenton, Johnston and Edgefield, all of which presently have existing water facilities.

The water distribution system as planned for Edgefield County and a portion of Aiken County under a funding program of three Federal agencies in concert serves an area represented by a "Y" shaped broken line as appears on a map which is a part of the Defendant's application for Public Works Assistance from the Farmer's Home Administration. Total funding in the amount of $5,074,000.00 is made available to the project in the following amounts and from the agencies designated:

1. Department of Commerce Grant (EDA) $1,690,000.00
2. Department of Housing and Urban Development Loan (HUD) $1,000,000.00
3. Department of Housing and Urban Development Grant (HUD) ..... $ 690,000.00
4. Department of Agriculture Loan (FHA) $1,694,000.00

The authority for this funding, by loan or grant, and in the same order, is as follows:

1. EDA Grant—Title 42 U.S. Code Section 3121 et seq.
2. HUD Loan—Title 42 U.S. Code Section 1492 et seq.
3. HUD Grant—Title 42 U.S. Code Section 3101 et seq.
4. FHA Loan—Title 7 U.S. Code Section 1926 et seq.

The Plaintiffs commenced this action on August 26, 1971, with service of a Summons, Complaint and Rule to Show Cause returnable on September 1, 1971. At a hearing on that date the temporary Restraining Order was dissolved and an injunction was refused. A pre-trial conference was held on November 1, 1971, and the trial scheduled for November 11, 1971. Judgment for the Defendant

was entered on December 7, 1971. This appeal is from that Order of the Honorable Robert W. Hemphill, United States District Judge, dismissing the Plaintiffs' action, as affirmed by the United States Court of Appeals for the Fourth Circuit.

The questions which survive for consideration by this Court are:

1. Can a proposed water system as funded by four Federal Acts be planned so as to violate specific sections of one or more of those Federal Acts and the intent of Congress in regard thereto?

a) Are there any valid considerations which would permit deviation of planning of a water system from the requisites of the Statutes which provide the funds for the system?

2. Can the Laches of a single taxpayer, member of a class of Plaintiffs, be imputed to the entire class of Plaintiffs so as to bar Plaintiffs participation in a class action suit?

STATUTES INVOLVED

TITLE 42 U.S.C. § 3121 *ET SEQ.*
CHAPTER 38—PUBLIC WORKS AND ECONOMIC DEVELOPMENT

§ 3121 *Congressional findings and statement of purpose*

The Congress declares that the maintenance of the national economy at a high level is vital to the best interests of the United States, but that some of our regions, counties, and communities are suffering substantial and persistent unemployment and underemployment; that such unemployment and underemployment cause hardship to many individuals and their families, and waste invaluable human resources; that to overcome this problem the Federal Government, in cooperation with the States, should help areas and regions of substantial and persistent unemployment and underemployment to take effective steps in planning and financing their public works and economic development; that Federal financial assistance,

including grants for public works and development facilities to communities, industries, enterprises, and individuals in areas needing development should enable such areas to help themselves achieve lasting improvement and enhance the domestic prosperity by the establishment of stable and diversified local economies and improved local conditions, provided that such assistance is preceded by and consistent with sound, long-range economic planning; and that under the provisions of this chapter new employment opportunities should be created by developing and expanding new and existing public works and other facilities and resources rather than by merely transferring jobs from one area of the United States to another.

3122. *Rural Development - Congressional Commitment*

(a) The Congress commits itself to a sound balance between rural and urban America. The Congress considers this balance so essential to the peace, prosperity, and welfare of all our citizens that the highest priority must be given to the revitalization and development of rural areas.

* * * *

§ 3131. *Direct and supplementary grants-Acquisition or Development of public works and development facilities; required findings precedent to making of direct grants; supplementary grants to provide matching share funds*

(a) Upon the application of any State, or political subdivision thereof, Indian tribe, or private or public nonprofit organization or association representing any redevelopment area of part thereof, the Secretary of Commerce (hereinafter referred to as the Secretary) is authorized -

1. to make direct grants for the acquisition or development of land and improvements for public works, public service, or development facility usage, and the acquisition, construction, rehabilitation, alteration, expansion, or improvement of such facilities, including related machin-

ery and equipment, within a redevelopment area, if he finds that-

(a) the project for which financial assistance is sought will directly or indirectly (i) tend to improve the opportunities, in the area where such project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities, (ii) otherwise assist in the creation of additional long-term employment opportunities for such area, or (iii) primarily benefit the long-term unemployed and members of low-income families or otherwise substantially further the objectives of the Economic Opportunity Act of 1964;

(b) the project for which a grant is requested will fulfill a pressing need of the area, or part thereof, in which it is, or will be, located; and

(c) the area for which a project is to be undertaken has an approved overall economic development program as provided in section 3142 (b) (10) of this title and such project is consistent with such program;

(d) in the case of a redevelopment area so designated under section 3161(a) (6) of this title, the project to be undertaken will provide immediate useful work to unemployed and underemployed persons in that area.

* * * *

Competition with regulated public utilities

(e) Except for projects specifically authorized by Congress, no financial assistance shall be extended under this section with respect to any public service or development facility which would compete with an existing privately owned public utility rendering a service to the public at rates or charges subject to regulation by a State or Federal regulatory body, unless the State or Federal regulatory body determines that in the area to be served by the facility for which the financial assistance is to be extended there is a need for an increase in such service (taking into consideration reasonably foreseeable future needs) which the existing public utility is not able to

meet through its existing facilities or through an expansion which it agrees to undertake.

• • • •

§ 3131. *Direct and supplementary grants-Acquisition or development of public works and development facilities; required findings precedent to making of direct grants; supplementary grants to provide matching share funds*

(a) Upon the application of any State, or political subdivision thereof, Indian tribe, or private or public nonprofit organization or association representing any development area or part thereof, the Secretary of Commerce (hereinafter referred to as the Secretary) is authorized—

• • • •

1. to make direct grants for the acquisition or development of land and improvements for public works, public service, or development facility usage, and the acquisition, construction, rehabilitation, alteration, expansion, or

§ 3132. *Additional grants to areas of substantial unemployment during preceding calendar year; annual review of eligibility*

(a) In addition to the assistance otherwise authorized to make grants in accordance with the provisions of this subchapter to those areas which the Secretary of Labor determines, on the basis of average annual available unemployment statistics, were areas of substantial unemployment during the preceding calendar year.

(b) Areas designated under the authority of this section shall be subject to an annual review of eligibility in accordance with section 312 of this title, and to all of the rules, regulations, and procedures applicable to redevelopment areas except as the Secretary may otherwise prescribe by regulation.

• • • •

§ 3161. *Area eligibility-Criteria for determining eligible areas; unemployment; median family income; Indian lands; loss of major source of employment*

(a) The Secretary shall designate as "redevelopment areas" -

(1) those areas in which he determines, upon the basis of standards generally comparable with those set forth in paragraphs (a) and (b), that there has existed substantial and persistent unemployment for an extended period of time and those areas in which he determines there has been a substantial loss of population due to lack of employment opportunity. There shall be included among the areas so designated any area-

(a) where the Secretary of Labor finds that the current rate of unemployment, as determined by appropriate annual statistics for the most recent available calendar year, is per centum or more and has averaged at least 6 per centum for the qualifying time periods specified in paragraph (B); and

(b) where the Secretary of Labor finds that the annual average rate of unemployment has been at least-

(i) 50 per centum above the national average for three of the preceding four calendar years, or

(ii) 75 per centum above the national average for two of the preceding three calendar years, or

(iii) 100 per centum above the national average for one of the preceding two calendar years.

The Secretary of Labor shall find the facts and provide the data to be used by the Secretary in making the determinations required by this subsection;

2. those additional areas which have a median family income not in excess of 40 per centum of the national median, as determined by the most recent available statistics for such areas;

3. those additional Federal or State Indian reservations or trust or restricted Indian-owned land areas which the Secretary of the Interior or an appropriate State agency, determines manifest the greatest degree

of economic distress on the basis of unemployment and income statistics and other appropriate evidence of economic underdevelopment;

4. Upon request of such areas, those additional areas in which the Secretary determines that the loss, removal, curtailment, or closing of a major source of employment has caused within three years prior to, or threatens to cause within three years after, the date of the request an unusual and abrupt rise in unemployment of such magnitude that the unemployment rate for the area at the time of the request exceeds the national average, or can reasonably be expected to exceed the national average, by 50 percentum or more unless assistance is provided. Notwithstanding any provision of subsection (b) of this section to the contrary, an area designated under the authority of this paragraph may be given a reasonable time after designation in which to submit the overall economic development program required by section 3142(b)(10) of this title;

5. Notwithstanding any provision of this section to the contrary, those additional areas which were designated redevelopment areas under the Area Redevelopment Act on or after March 1, 1965; Provided, however, That the continued eligibility of success areas after the first annual review of eligibility conducted in accordance with 3162 of this title shall be dependent on their qualification for designation under the standards of economic need set forth in subsections (a)(1) through (a)(4) of this section;

6. those areas selected for assistance under part D of title I of the Economic Opportunity Act of 1964, and those areas which the Secretary determines meet the purposes of section 150 of part D of title I of the Economic Opportunity Act of 1964, and which otherwise meet the requirements of this chapter, except that no redevelopment area established under this paragraph shall be eligible to meet the requirement of section 3171(a)(B) of this title.

Size and boundaries of redevelopment areas

(b) The size and boundaries of redevelopment areas shall be as determined by the Secretary: Provided, however, That-

1. no area shall be designated until it has an approved overall economic development program in accordance with section 3142(b) (10) of this title;

2. any area which does not submit an acceptable overall economic development program in accordance with section 3142 (b) (10) of this title within a reasonable time after notification of eligibility for designation, shall not thereafter be designated prior to the next annual review of eligibility in accordance with section 3162 of this title;

3. No area shall be designated which does not have a population of at least one thousand five hundred persons, except that this limitation shall not apply to any area designated under subsection (a) (3) or (a) (6) of this section; and

4. except for areas designated under subsections (a) (3), (a) (4) and (a) (6) hereof, no area shall be designated which is smaller than a "labor area" (as defined by the Secretary of Labor), a county, or a municipality with a population of over two hundred and fifty thousand, whichever in the opinion of the Secretary is appropriate.

• • • •

TITLE 42 U.S.C. § 3101 et seq.

CHAPTER 3.7—COMMUNITY FACILITIES AND ADVANCE LAND ACQUISITION

§ 3101. *Congressional declaration of purpose*

The purpose of this chapter is to assist and encourage the communities of the Nation fully to meet the needs of their citizens by making it possible, with Federal grant assistance, for their governmental bodies (1) to construct adequate basic water and sewer facilities needed to promote the efficient and orderly growth and development of our communities, (2) to construct neighborhood facilities needed to enable them to carry on programs of necessary

social services, and (3) to acquire, in a planned and orderly fashion, land to be utilized in the future for public purposes.

• • • •

TITLE 42 U.S.C. § 1491 et seq.

§ 1491. *Declaration of policy*

It has been the policy of the Congress to assist wherever possible the States and their political subdivisions, and Indian tribes to provide the services and facilities essential to the health and welfare of the people of the United States.

The Congress finds that in many instances municipalities, or other political subdivisions of States, and Indian tribes, which seek to provide essential public works or facilities (including mass transportation facilities and equipment), are unable to raise the necessary funds at reasonable interest rates.

It is the purpose of this chapter (subject to the limitations contained herein) to authorize the extension of credit to assist in the provision of certain essential public works or facilities by States, municipalities, or other political subdivisions of States, and Indian tribes, where such credit is not otherwise available on reasonable terms and conditions.

§ 1492. *Public projects-Purchase of securities or obligations; loans; payment of operating expenses*

(a) The Secretary of Housing and Urban Development is authorized (1) to purchase the securities and obligations of, or make loans to, municipalities and other political subdivisions and instrumentalities of one or more States (including public agencies and instrumentalities of one or more municipalites or other political subdivisions of one or more States), and Indian tribes to finance specific projects for public works or facilities under States, municipal, or other applicable law, and (2) to purchase the securities and obligations of, or make loans to, States, municipalities and other political subdivisions of States, public

agencies and instrumentalities of one or more States, municipalities and political subdivisions of States, and public corporations, boards, and commissions established under the laws of any State, to finance the acquisition, construction, reconstruction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in mass transportation service in urban areas, and for use in coordinating highway, bus, surface-rail, underground, parking and other transportation facilities in such areas. The facilities and equipment referred to in clause (2) may include land, but not public highways, and any other real or personal property needed for an economic, efficient, and coordinated mass transportation system. No such purchase or loan shall be made for payment of ordinary governmental or non-project operating expenses.

* * *

§ 1493. *Notes and obligations; forms and denominations; maturities; terms and conditions; interest rate; revolving fund*

(a) In order to finance activities under this chapter, the Secretary is authorized and empowered to issue to the Secretary of the Treasury, from time to time and to have outstanding at any one time, notes and other obligations in an amount not to exceed $650,000,000: Provided, That, of the funds obtained through the issuance of such notes and other obligation, $600,000,000 shall be available only for purchases and loans pursuant to clause (1) of section 1492(a) of this title and $50,000,000 shall be available only for purchases and loans pursuant to clause (2) of such section. Such obligations shall be in such forms and denominations, have such maturities and be subject to such terms and conditions as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury which shall be not more than the higher of (1) 2½ per centum per annum, or (2) the average annual interest rate on all interest-bearing obligations of the United

States then forming a part of the public debt as computed at the end of the fiscal year next preceding the issuance by the Secretary and adjusted to the nearest one-eighth of 1 per centum. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Secretary to be issued hereunder and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(b) Funds borrowed under this section and any proceeds shall constitute a revolving fund which may be used by the Secretary in the exercise of his functions under this chapter.

* * *

TITLE 7 U.S.C. § 1921 et seq.
SUBCHAPTER I. - REAL ESTATE LOANS

§ 1921. *Congressional findings*

The Congress hereby finds that the statutory authority of the Secretary of Agriculture, hereinafter referred to in this chapter as the "Secretary," for making and insuring loans to farmers and ranchers should be revised and consolidated to provide for more effective credit service to farmers.

§ 1922. *Persons eligible for loans*

The Secretary is authorized to make and insure loans under this subchapter to farmers and ranchers in the United States and in Puerto Rico and the Virgin Islands who (1) are citizens of the United States, (2) have a

farm background and either training or farming experience which the Secretary determines is sufficient to assure reasonable prospects of success in the proposed farming operations, (3) are or will become owner-operators of not larger than family farms, and (4) are unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

§ 1923. *Purposes of loans; preferences*

Loans may be made or insured under this subchapter for (1) acquiring, enlarging, or improving farms, including farm buildings, land and water development, use and conservation, (2) recreational uses and facilities, (3) enterprises needed to supplement farm income, (4) refinancing existing indebtedness, and (5) loan closing costs. In making or insuring loans for farm purchase, the Secretary shall give preference to persons who are married or have dependent families and, wherever practicable, to persons who are able to make initial downpayments, or who are owners of livestock and farm implements necessary successfully to carry on farm operations.

§ 1926. *Water and waste facility loans and grants—Criteria; definitions; limitation on allowable uses of Federal funds*

(a) (1) The Secretary is also authorized to make or insure loans to associations, including corporations not operated for profit, and public and quasi-public agencies to provide for the application or establishment of soil conservation practices, shifts in land use, the conservation, development, use, and control of water, and the installation or improvement of drainage or waste disposal facilities, and recreational developments, all primarily serving farmers, ranchers, farm tenants, farm laborers, and other rural residents, and to furnish financial assistance or other aid in planning projects for such purposes.

(2) The Secretary is authorized to make grants aggregating not to exceed $100,000.00 in any fiscal year to such associations to finance specific projects for works for the development, storage, treatment, purification, or distribution of water or the collection, treatment, or disposal of waste in rural areas. The amount of any grant made under the authority of this paragraph shall not exceed 50 per centum of the development cost of the project to serve the area which the association determines can be feasibly served by the facility and to adequately serve the reasonably foreseeable growth needs of the area.

(3) No grant shall be made under paragraph 2 of this subsection in connection with any facility unless the Secretary determines that the project (i) will serve a rural area which is not likely to decline in population below that for which the facility was designed, (ii) is designed and constructed so that adequate capacity will be or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area, or (iii) is necessary for orderly community development consistent with a comprehensive community water or sewer development plan of the rural area and not inconsistent with any planned development under State, county, or municipal plans approved as official plans by competent authority for the area in which the rural community is located and the Secretary shall establish regulations requiring the submission of all applications for financial assistance under this chapter to the county or municipal government in which the proposed project is to be located for review and comment by such agency within a designated period of time. Until October 1, 1971, the Secretary may make grants prior to the completion of the comprehensive plan, if the preparation of such plan has been undertaken for the area.

(4) (A) The term "development cost" means the cost of construction of a facility and the land, easements, and

rights-of-way, and water rights necessary to the construction and operation of the facility.

(B) The term "project" shall include facilities providing central service or facilities serving individual properties or both.

* * * *

STATEMENT OF THE CASE

Recognizing that various geographical areas of this Country were suffering substantial and persistent unemployment and under employment which causes hardship to many individuals and their families, and wastes invaluable human resources, Congress enacted the Public works and Economic Development Act of 1965 (42 U.S.C. § 3121 et seq.) under which certain areas, designated as economically depressed areas, would receive funds for public works projects. Under this Act the Edgefield County Water and Sewer Authority applied for and received a grant of $1,690,000.00.

Thus it appears at the outset that there is one Act specifically designed to aid areas designated as economically depressed areas, and Edgefield County has been so designated by the Department of Commerce. Aiken County, which adjoins Edgefield County to the South, and to which a portion of the water service will be routed, has not been so designated. In reality, Aiken County has been designated by the Department of Commerce as a growth center area.

The legislative history of this Act is found at 1965 U.S. Code Cong. and Adm. News, p. 2788, *et seq.* From a study of House Report 539 it is obvious that the Public Works and Economic Development Act is the outgrowth of the other former Acts: the Area Redevelopment Act, the Public Works and Acceleration Act, and the Appalachian Regional Development Act.

The Area Redevelopment Act (Pub.L. 87-27) enabled the establishment of a new Area Redevelopment Administration under the Department of Commerce. The Area

Redevelopment Act has six basic deficiencies which were sought to be corrected in the new Act.

The Public Works Acceleration Act (Pub.L. 87-658) became law on September 14, 1962. Although it has no expiration date, its authorization of $900 million for public works was exhausted in two years in over 7,700 projects. The House Report states that the economic development aspect of this Act is still sorely needed in order to help the chronically distressed areas acquire the environmental or developmental facilities needed to support their self-help efforts to develop more jobs.

Consequently, the proposed legislation (the Public Works and Economic Development Act of 1965), while retaining many features of the Public Works Acceleration Act, is more restrictive as to area eligibility than its predecessor, and it requires with respect to most projects a general relationship to overall economic development. House Report No. 539.

The Appalachian Regional Development Act (Pub. L. 89-4) was still in effect and was being utilized when the Public Works and Economic Development Act was passed, but Congress felt that other needy regions needed assistance; thus, the current Act recognizes these areas which, though of character to the Appalachian region, did not qualify under the terms of the Appalachian Act itself. The House Report further added:

> There are people who cannot relocate, who, for successfully make the transition from the area where they were born. * * * *

A great amount of relocation of labor has already taken place. Many young people have left distressed areas in search of places where economic opportunities are more promising. A declining population is a sure indicator of economic distress. Unfortunately, outmigration usually takes place among the prime element of the labor force, the younger, more aggressive, more productive "self-starters." Unless an alternative to out-migration can be provided, it gradually robs an area of its most important

ingredient for rehabilitation, the existence of a labor force. House Report No. 539.

The House Committee discussed "economic need" and made some unique statements concerning the determination of economic need:

> * * * since virtually all areas participating in this program will be designated on the basis of need, the committee hopes that the Secretary (of Commerce) will follow his stated intention to publish a list of all eligible areas. * * * A system which attempted to distinguish between areas on the basis of their apparent "ability to pay" would not seem appropriate to a program of this type. House Report No. 539.

In order to implement this Act, President Nixon, on November 13, 1969, issued Executive Order No. 11493 (34 F.R. 18289) by which he organized the Council for Rural Affairs in language as follows:

> WHEREAS, rural America is vitally important to this Nation's total economy and society; and
>
> WHEREAS, there is a need to provide expanded employment opportunities and more attractive living conditions outside the metropolitan areas; and
>
> WHEREAS, a viable rural America would offer an opportunity for farmers and other rural residents to share in the economic growth of the Country * * *

President Nixon thus recognized the Public Works Act was designed to aid a particular segment of our society; that to implement the Act he organized a Council which is dealing primarily with rural affairs.

We must not ignore the language of Section 3122 of this Act. It is self-defining:

> The Congress commits itself to a sound balance between rural and urban America. The Congress considers this balance so essential to the peace, prosperity, and welfare of all our citizens that the highest priority must be given to the revitalization and development of rural areas. 42 U.S.C. 3122 (a).

Another Act under which the proposed water project

is funded, and under which the Farmer's Home Administration of the Department of Agriculture is participating is Title 7, U.S. Code Section 1926:

> The Secretary (of Agriculture) also is authorized to make or insure loans to associations, including corporations not operated for profit and quasi-public agencies, to provide * * * for conservation, development, use and control of water * * * all primarily for serving farmers, ranchers, farm tenants, farm laborers, and rural residents, and to furnish financial assistance or other aid in planning projects for such purposes. * * *

The Department of Housing and Urban Development issued a grant of $690,000 and a loan of $1,000,000 to the Edgefield County Water and Sewer Authority under the provisions of two Acts. We should first examine Title 42, U.S. Code Section 1492:

> (a) The Secretary of Housing and Urban Development authorized:
>
> (1) to purchase the securities and obligations of, or to make loans to municipalities and other political subdivisions * * * to finance specific projects for public works or facilities * * *

While subsection (a) seems to grant the Secretary the right to help counties as political subdivisions, subsection (c) is clear as to where the priority lies:

> (c) In the processing of applications for financial assistance under clause (1) of subsection (a) of this section the Secretary shall give priority to applications of smaller municipalities for assistance in the construction of basic public works * * * for which there is an urgent and public need. * * *

The grant of $690,000 from the Department of Housing and Urban Development is authorized by Title 42, U. S. Code Section 3101. The statement of purpose of this Act is as follows:

> The purpose of this chapter is to assist and encourage the communities of the Nation fully to meet

> the needs of their citizens by making it possible, with Federal grant assistance, for governmental bodies (1) to construct orderly growth and development of our communities, (2) to construct neighborhood facilities needed to enable them to carry on programs of necessary social services, and (3) to acquire, in a planned and orderly fashion, land to be utilized in the future for public purpose. 42 U.S.C. 3101.

We submit that this language is clear as to the intended beneficiaries of this Act as being "communities", and that the funds are to be used in water and sewer facilities and to promote growth of these communities in an orderly fashion.

The problem is that the Edgefield County Water and Sewer Authority took grants and loans under the four aforementioned Acts and then planned a water system to serve only the three towns in the County which already have existing, although inadequate, water systems, plus incidental new users who may lie along the proposed route of the withdrawal water lines. At best, they do not serve the intended beneficiaries under the Public Works and Economic Development Act of 1965.

The trial Court found, and the Court of Appeals affirmed, (at page 10 of the Order of the Trial Judge) that Aiken County is properly to be served by the water system:

> • • • Furthermore, this small area is eligible for assistance under the Public Works and Economic Development Act of 1965. There is no evidence that the Authority included this area for any reason than to support the feasibility of the entire project. • • •

The Court was thus misled into believing that economic feasibility was a criteria of the Public Works and Economic Development Act of 1965, when in fact, the funds derived from this Act were by way of a direct grant. There never was a need to repay. Congress had already recognized that the areas to be served by this Act would be so

economically depressed that the ability of the system to repay itself was not a criteria. The criteria was and is the need for water.

But, the criteria at this point was one inserted by the Farmer's Home Administration, which loaned $1,694,000.00 to the project, although it does not appear in the Act either. Agriculture Credit Act, 7 U.S.C. § 1926, et seq. Their criteria was that the proposed project must acquire 1,000 new users in order to be economically feasible. The Farmer's Home Administration applauded the expansion of the existing systems in the three towns, yet their Act is to aid farmers, ranchers, farm tenants, farm laborers and rural residents in the conservation, development, use and control of water. 7 U.S.C. § 1926.

Basically, the complaint of the class of Petitioners is that the Edgefield County Water and Sewer Authority received funds for a water project under four Federal Acts, each of which intends to benefit a specific and particular class of citizen by reason of his geographical location or economic condition, yet the project fails to benefit those classes of citizens.

REASONS FOR CERTIORARI

The substantive question adroitly avoided below is not whether the proposed water project substantially conforms to the requisites of the Federal funding acts, but in reality, whether or not those persons or geographical areas that are intended as beneficiaries of a water system under the Acts, do, in fact, benefit from the project. Thus, the true question emerges as being whether or not an agency can accept Federal funds specifically earmarked for the purposes enumerated in the Acts, and apply them to such purposes as to fail to benefit those persons or geographical areas defined as the primary beneficiaries of the Acts.

The national policy is first defined in 42 U.S.C. § 3121 which recognizes there are some areas of our Country suffering substantial and persistent unemployment and un-

deremployment. Section 3122 directs that the highest priority must be given to the revitalization and development of rural areas. Section 3161 sets forth the criteria for determining area eligibility as a "redevelopment area."

This Act is not a solution to our national problem of urban migration, nor does it solve the basic problem of the shifting of industry and thus the migration of those seeking employment. There is no question, however, that Congress intended, by The Public Works and Economic Development Act of 1965, that people be enticed to stay where they were through the reward of the immediate availability of water. 1965 U.S. Code Cong. and Adm. News, p. 2788, *et seq.* (House Report 539).

There is no argument that the language of this Statute is clear and unambiguous. There is no argument that the government relinquished its control over a state need. Likewise, there is no question that the proposed water system conforms to the requirements of some of the other Acts which provided funding.

The grant of $1,690,000.00 under the Public Works and Economic Development Act of 1965 (42 U.S.C. § 3121, *et seq.*) however, is being used to provide water to three existing towns without regard to the criteria of the Act. In addition, the entire project has been tied to an "ability to repay" the money concept, which should have no relation to grant funds. Finally, a portion of the water system will serve a County at the opposite pole of need, and which has been designed as one of the "growth centers" in South Carolina.

The Housing and Urban Development Public Works or Facilities Act (42 U.S.C. § 1492, *et seq.*) provided a loan of $1,000,000.00 to the project. This Act is designed specifically to aid urban growth by aiding the growth of urban public utilities. The proposed water system does exactly this, and no more.

The Agriculture Credit Act (7 U.S.C. § 1926, *et seq.*) is intended, by its very language, to provide for the con-

servation, development, use and control of water for serving farmers, ranchers, farm tenants, farm laborers and rural residents. The proposed project benefits the existing water systems in the three towns being served; and the people who answer the descriptions as set out in the Act are ignored.

The Housing and Urban Development Community Facilities and Advance Land Acquisition Act (42 U.S.C. § 3101, *et seq.*) which granted $690,000.00 to the project is clear and unambiguous. It is intended to aid the orderly growth and development of towns and cities.

Thus, we reach the true issue: Can Federal funds be used for purposes not intended by the Statute furnishing those funds, where necessity would provide that the funds are of importance to the end result of other Federal Statutes?

It is clear that this alone is a question whose resolution will have necessary and immediate importance far beyond the facts of this case. The question presented defends a vastly important principle upon which are based the plans, hopes and aspirations of many, many people throughout this Country.

There is an obvious great need for uniformity in the application of rules concerning the use of Federal funds commingled with other Federal funds for the purpose of avoiding the Federal regulations and statutory requirements attached to a portion of those funds.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

STANLEY H. KOHN
1408 Bull Street
Columbia, South Carolina 29201
Telephone: (803) 765-2935

OF COUNSEL:
GERALD M. FINKEL

...L.Ed. 667 (1879).

[9,10] To obtain relief petitioner must show purposeful racial discrimination. Swain v. State of Alabama, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965). A showing that a substantial disparity exists between the proportion of presumptively qualified Negroes in the general population and their proportion on juries will establish a *prima facie* case of racial discrimination if the disparity is coupled either with additional positive indicia of discrimination or with a showing that the selection procedure provides an opportunity to discriminate. Stephens v. Cox, 449 F.2d 657, 659 (4th Cir. 1971).

[11,12] It does not appear that petitioner has overcome his burden to make out a *prima facie* case. The selection of petit and grand juries from the pool is clearly impartial and nondiscriminatory. Stephens v. Cox, supra. Moreover, although he had the opportunity at the State hearing to do so, he failed to adduce any figures on the percentages of Negroes on the jury list in 1966 or 1967. Clearly there are no "positive indicia of discrimination" here, nor does the opportunity for discrimination appear from the record. The list was not segregated by race, nor were individual names similarly designated in any form. The Constitution does not forbid the personal acquaintance of the commissioner with the prospective juror as a criterion of selection. It only requires that the commissioners learn who is qualified. Turner v. Fouche, 396 U.S. [illegible] 90 S.Ct. 532, 24 L.Ed.2d 567 (1970). The testimony developed at the hearing unequivocally indicates that the commissioners did perform their duty [illegible]

...also attributed to it in the *Witcher* cases. Witcher v. Peyton, 382 F.2d 707 (4th Cir. 1967); Witcher v. Peyton, 405 F.2d (4th Cir. 1969).[5] Having failed to meet his burden, Hodnett's claim cannot support the grant of habeas corpus relief.

Accordingly, it is ordered and adjudged that the petition for a writ of habeas corpus be and is hereby dismissed.

Walton W. MIMS, Individually and as representative of a class of citizens composed of resident and taxpayers of a common geographical subdivision, Plaintiffs,

v.

W. G. YARBOROUGH et al., Defendants.

Civ. A. No. 71-882.

United States District Court,
D. South Carolina,
Greenwood Division.

Dec. 6, 1971.

Action for order restraining county water and sewer authority from implementing water distribution project which plaintiff contended was in contravention of various federal acts. The District Court, Hemphill, J., held that evidence established that large concentrations of [illegible] located about reservoir [illegible] by water authority for [illegible]

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trial development would be created along the route and that those opportunities would be accessible to persons living in all areas of county and would tend to diminish out-migration from those areas.

Complaint dismissed.

Judgment affirmed, 4 Cir., 461 F.2d 1266.

1. Waters and Water Courses ⇐194

Use of small portion of funds, contemplated for countywide water and sewer system, to construct water lines in small area of adjoining county which was included in service area of the water authority was not improper, where the small area was eligible for system under the Public Works and Economic Development Act, there was no evidence that the authority included the area for any reason other than to support feasibility of entire project and inclusion of part of adjoining county was complementary to and in aid of the general purpose to give much needed economic development. Act of July 12, 1967 S.C., 55 St. at Large, p. 1072 as amended; 42 U.S.C.A. §§ 1492, 3102; Consolidated Farmers Home Administration Act of 1961, 306, 7 U.S.C.A. § 1926; Public Works and Economic Development Act of 1965, §§ 2, 101, 42 U.S.C.A. §§ 3121, 3131.

2. Injunction ⇐128

In action for order restraining county water and sewer authority from implementing water distribution project which plaintiffs contended was in contravention of various federal acts, evidence established that area described by plaintiffs as the rural heart of the county was not included in the proposed water distribution project, that the route proposed [illegible] by authority before choosing [illegible] Public Works and Economic Development Act of 1965, § 2, 42 U.S.C.A. § 3121.

3. United States ⇐82

Fact that water authority considered economic feasibility factors did not make water distribution project ineligible for participation by the Economic Development Administration in the Department of Commerce. Public Works and Economic Development Act of 1965, § 2, 42 U.S.C.A. § 3121.

4. United States ⇐82

Promotion of industrial opportunities in a chronically depressed economic area and aiding disadvantaged peoples in obtaining basic public services are legitimate considerations under the Public Works and Economic Development Act of 1965. Public Works and Economic Development Act of 1965, § 2, 42 U.S.C.A. § 3121.

5. Injunction ⇐128

In action for order restraining county water and sewer authority from implementing a water distribution project, evidence established that large concentrations of disadvantaged persons were located along route proposed by water authority for water main that the water system, as proposed would provide basic public services [illegible] of those disadvantaged [illegible] would be created along the route [illegible] that those opportunities would be accessible to persons living in all areas of county and would tend to diminish out-migration from those areas. Public Works and Economic Development Act of 1965, § 2, 42 U.S.C.A. § 3121.

6. United States ⇐82

[illegible] Public Works and Economic Development Act of 1965, § 2, 42 U.S.C.A. § 3121.

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Under section of Public Works and Economic Development Act authorizing Secretary of Commerce to make grants to public or private nonprofit organizations for acquisition or development of land and improvements for public works, Secretary has considerable discretion and he need find only that the grant applicant represents part of redevelopment area and that effect of project will assist in creation of employment opportunities, and facts that part of project is located in area that is less economically depressed than remainder of redevelopment area or that portion of redevelopment area may be urbanizing while remainder is losing population are of no consequence. Public Works and Economic Development Act of 1965, § 101, 42 U.S.C.A. § 3131.

4. Injunction ⇐128

In action for order restraining county water and sewer authority from implementing water distribution project on ground that it contravened statute providing that financial assistance shall not be extended to public service utility which would compete with existing privately owned public utility, evidence established that the water system, as proposed by water authority, would not compete with any existing privately owned public utility. Public Works and Economic Development Act of 1965, § 101, 42 U.S.C.A. § 3131.

5. Injunction ⇐128

To be entitled to injunction, plaintiff has burden of proving a clear case, reasonably free from doubt.

6. Injunction ⇐130

In action for order restraining county water and sewer authority from implementing water distribution project, tremendously damaging effect upon public interest of granting injunction must be considered by court. Public Works and Economic Development Act of 1965, § 2, 42 U.S.C.A. § 3121.

11. Injunctions ⇐26

In cases involving exercise of judgment or discretion by executive departments of federal government or duly appointed members of county authority general rule is that injunctive relief should be denied and that court should not attempt to substitute its judgment for that of public official involved, even if the judgment appears to be unwise, short of a showing of fraud, illegality or oppression.

12. Injunction ⇐113

Plaintiff who did not institute action for order restraining county water and sewer authority from implementing water distribution project until almost three years after he had been given copy of comprehensive plan for the project was guilty of laches and unreasonable delay in instituting action. Public Works and Economic Development Act of 1965, § 2, 42 U.S.C.A. § 3121.

Stanley H. Kohn and Gerald M. Finkel, of Kohn & Finkel, Columbia, S. C., for plaintiffs.

Howard L. Burns and J. Kendall Few, of Burns, McDonald, Bradford, Erwin & Few, Greenwood, S. C., for defendants as members of the Edgefield County Water and Sewer Authority.

HEMPHILL, District Judge.

On August 26, 1971, the plaintiff instituted this suit, by filing his complaint in this alleged class action on behalf of the residents and taxpayers of Edgefield County, South Carolina, against the Edgefield County Water and Sewer Authority and others. The United States Army Corps of Engineers, United States Department of Housing and Urban Development and United States Department of Commerce have all been dismissed[1] as party defendants by consent. Plaintiff seeks an Order restraining the Water Authority from continuing with further implementation of a water distribution

1. Approved by pretrial order dated November 2, 1971.

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roject which the plaintiff contends is in ontravention of various Federal Acts. The Water Authority, by its Answer asserts three basic defenses: (1) a general denial, (2) laches and (3) an affirmative defense alleging that the Federal financing of the Water Authority's Proposed Water Distribution Project is a co-operative venture of the Farmers Home Administration (FHA), the Economic Development Administration of the Department of Commerce (EDA) and the Department of Housing and Urban Development (HUD), and alleging further that the Plan for the Water Authority's Proposed Water Distribution Project complies with the Federal Legislation applicable to each of these agencies.

Initially the plaintiff contended that the Water Authority had failed to provide proper notice of its proposal and had failed to allow the residents and taxpayers of Edgefield County an opportunity to express their views on the matter. After hearing testimony on plaintiff's application for a preliminary injunction (which was denied by this court on September 1, 1971), a pretrial conference was held at Greenwood, S. C., on November 1, 1971, at which time the plaintiff and defendant agreed and stipulated that public notice was no longer an issue. A Pretrial Order was issued setting forth the two remaining issues for determination by this court:

1. Do the Plans for a County-wide Water and Sewer System for Edgefield County, as it is presently proposed, contemplate the receipt and use of available funds (from grant or loan) for purposes violative of the Federal Statutes authorizing and controlling the establishment of such a system?

2. Is plaintiff guilty of laches and unreasonable delay in the bringing of this action after full knowledge on his part of the nature and extent of the Water facilities proposed to be constructed? [2]

The Edgefield County Water and Sewer Authority was created by the General Assembly of the State of South Carolina pursuant to Act No. 571 of 1967. This Act was later amended by Act No. 1192 of 1970. As amended, insofar as it pertains to this action, the Act provides as follows:

Section 1 There is hereby created a body corporate and politic to be known as the Edgefield County Water and Sewer Authority . . . . Its service area shall include all of Edgefield County and a small area of Aiken County described in Section 6 . . . . It shall be the principal function of the Authority to acquire supplies of fresh water, capable of being used for industrial and domestic purposes, and to distribute such water, in the manner herein provided, for industrial and domestic use within its service area. To that end, it shall be empowered to construct such . . . water distribution facilities, water mains and water lines, as in the opinion of the Authority may be deemed necessary . . . .

* * * * * *

Section 6. To the end that the Authority shall not unduly compete with the existing publicly operated water systems in the county, the Authority shall not . . sell water elsewhere than in Edgefield County and in a small area in the southwestern corner of Aiken County bounded on the east by the eastern right of way of U. S. Highway No. 25 and the south by the southern right of way of U. S. Interstate 20. Edgefield County and the above described area of Aiken County are hereby defined to be the service area of the Authority.

Section 7. The Authority shall be fully empowered to acquire, construct, operate, maintain, improve and extend facilities which would enable it to obtain fresh water in large volume, and to distribute and sell the same . . . at any point within its service area. To that end the

[2] The Pretrial Order also included an agreement of counsel at the pretrial hearing that the entire record before the court at the hearing on the Motion for preliminary injunction, September 1, 1971, be included as a part of the record.

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thority shall have the following pow-

* * * * * *

(9) To build, construct, maintain and operate water distribution systems for the distribution of water for domestic or industrial use and from time to time to enlarge and extend such systems.

* * * * * *

(11) To acquire gifts or grants of services, properties or moneys from the United States, or any of its agencies, under such conditions as the United States, or such agency shall prescribe.

* * * * * *

(25) To borrow money and to make and issue negotiable bonds, notes and other evidences of indebtedness, payable from all or any part of the revenues derived from the operation of its facilities . . . .

CHRONOLOGY

y 12, 1967—Creation of the Edgefield County Water and Sewer Authority by legislative enactment.

ember, 1967—Engineering firm of Davis and Floyd, Engineers, Inc., Drawer 428, Greenwood, S. C., employed by the Edgefield County Planning Board to develop a comprehensive plan for water and sewer development for Edgefield County.

y 13, 1968—Engineering firm met with county officials and the Edgefield County Planning Board.

y 9, 1968—Engineering firm met with the Edgefield County Planning Board.

ber 30, 1968—Another meeting with the County Planning Board.

mber 6, 1968—The Edgefield County Water and Sewer Authority applied to the United States Department of Housing and Urban Development (HUD) for an advance of funds for Public Works Planning.

ry 17, 1969—Complete report (De- Exhibit B) was approved and the engineers were authorized to proceed. This was a formal approval of the comprehensive plan by the Edgefield County Planning Board.

October 1969—Contract for final plans with the engineer was signed (HUD Form 4430).

November 19, 1969—HUD Form 44 submitted requesting review and approval of the planning. At this time the target date for start of construction was amended to September 197

February 10, 1970—Authorization for the project was granted by the State Planning and Grants Division and by the Upper Savannah Planning District. The State Water Resources Commission approved also, but deferred comment until the point of withdrawal is established.

March 2, 1970—Application was made to the Department of Commerce for a grant to cover the project.

March 27, 1970—Assurance of compliance with the Civil Rights Act of 196 signed by the Edgefield County Water and Sewer Authority.

April 17, 1970—Open meeting held in Edgefield to answer questions about the system as proposed and adopted.

April 28, 1970—Jaycee Meeting.

April 28, 1970—Meeting at Johnston High School.

May 5, 1970—American Legion Meeting

May 7, 1970—Johnston Lions Club Meeting.

May 7, 1970—Edgefield Masonic Lodge Meeting.

May 11, 1970—Edgefield Lions Club Meeting.

May 12, 1970—Meeting at Edgefield Courthouse.

July 28, 1970—Conference of agency officials at Edgefield.

August 26, 1971—Complaint filed in United States District Court for the District of South Carolina.

August 26, 1971—United States Dis-

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ing order and issued Rule to Show Cause to defendants, to be heard September 1, 1971.

August 31, 1971 Defendant Army Corps of Engineers moves to vacate temporary restraining order.

September 1, 1971 Answers of defendants, members of the Edgefield County Water and Sewer Authority, filed.

September 1, 1971—Motion for preliminary inspection heard, Rule to Show Cause discharged and temporary restraining order vacated. United States Army Corps of Engineers dismissed as a party.

October 26, 1971—United States Department of Housing and Urban Development and United States Department of Commerce answer, at the same time contesting the jurisdiction of the court.

October 27, 1971—Public Meeting held at Edgefield County Courthouse by United States Army Corps of Engineers.

November 1, 1971—Pretrial hearing at Greenwood, S. C. Issues set forth. Agreed that no South Carolina statutes were questioned and that all matters and evidence submitted to the court at the hearing on the Rule to Show Cause be included in the record for consideration on the merits. At this pretrial plaintiff's counsel stipulated that there no longer existed an issue as to whether the Authority had met publication requirements. Other matters were discussed. Hearing set for November 11.

November 11, 1971—Hearing on merits at Greenwood, S. C. Proposed orders ordered submitted.

QUESTIONS PRESENTED

1. Do the plans for a county-wide water and sewer system for Edgefield County, as it is presently proposed, contemplate the receipt and use of available funds (from grant or loan) for purposes violative of the Federal Statutes authorizing and controlling the establishment of such a system?

2. Is plaintiff guilty of laches and unreasonable delay in the bringing of this action after full knowledge on his part of the nature and extent of the water facilities proposed to be constructed?

BACKGROUND GEOGRAPHY

The controversy here involves the layout of the water distribution system as set forth in the report, entitled, "Engineering Report and General Data—Proposed Water Facilities"[3] filed by the engineering firm.[3] To understand the controversy, however, it is necessary first to understand the geography of Edgefield County. Edgefield County is basically a five-sided county bounded on the North by Greenwood County, on the Northeast by Saluda County, on the Southeast by Aiken County, on the Southwest by the Savannah River and on the West by McCormick County. There are six census divisions in Edgefield County:

1. Pleasant Lane lies in the extreme northern portion of the county.
2. Edgefield North lies in the north central portion of the county.
3. Edgefield South lies in the west central portion of the county.
4. Johnston lies in the extreme eastern corner of the county.
5. Trenton lies in the southeastern section of the county.
6. Meriwether lies in the extreme southern end of the county.

There are three small towns located in Edgefield County. Edgefield is located near the center of the county on the boundary line between two census divisions: Edgefield North and Edgefield South. Johnston lies in the northeastern section of the county in the Johnston census division. Trenton lies in the southeastern portion of the county in the Trenton census division.

In 1960, Edgefield County had a population of 15,735; and in 1970 this fig-

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ure dwindled to 15,476. The population of this county has decreased consistently for over 50 years. In 1960 Pleasant Lane had a population of 1330, which had decreased to 1297 in 1970.[4] Edgefield North had 1672 in 1960, 1297 in 1970, Edgefield South had 1676 rural and 2876 urban in 1960, 1249 rural and 2479 urban (in the City of Edgefield) in 1970; Johnston had 5252 in 1960, 4781 in 1970 and Trenton had 1733 in 1960 and 1425 in 1970. The only division increasing in population was Meredith, from 1196 in 1960 to 2696 in 1970; this is partially explained by relocation of the southern boundary of Edgefield County in such a way as to take in part of Aiken County and that portion added included both sides of a fairly populous highway.

THE PLAN

The Engineering Report and General Data projected the following recommendations:

1. That the Authority purchase the Water Distribution Systems of the three towns.

2. That the Authority construct a Water Distribution System consisting of an intake structure and filter plant on the Savannah River in the southern end of Edgefield County in the Meriwether census division. From this point a water main would run in an easterly direction to a point on U. S. Highway No. 25. From there the main would turn in a northerly direction and run along U. S. Highway No. 25 through the middle of the Trenton census division to a point near the Town of Trenton. From this point the water main would fork out in two directions, one running through Trenton in a northeasterly direction to Johnston and the other running in a northwesterly direction along Highway 25 to Edgefield.

3. That the Proposed Water Distribution System be financed in part through anticipated revenues and part by grants from HUD and Ed

Acting on the recommendations contained in the Engineering Report and General Data, in early spring of 1970 the Water Authority made applications to FHA, EDA and HUD for grants and loans for the purpose of constructing the Proposed Water Distribution System and retiring the obligations of the Water Systems of the three towns. Between April 17 and May 12 of 1970 three Public Meetings and several civic club meetings were held in the Towns of Johnston and Edgefield at which time the Engineers and other representatives of the Authority explained the Proposed System. On May 14, 1970, separate elections were held in each of the three towns resulting in a combined vote of approximately ten (10) to one (1) in favor of transferring the Water Systems and obligations of the three towns to the Water Authority. Shortly after these elections, the Water Authority was notified by the three federal agencies that grants and loans in the aggregate amount of Five Million Seventy-Four Thousand and No/100 ($5,074,000.00) Dollars had been approved to finance the project. The grants and loans so approved were broken down as follows:

1. An EDA grant of One Million Six Hundred Ninety Thousand and No/100 ($1,690,000.00) Dollars.

2. An FHA loan of One Million Six Hundred Ninety-Four Thousand and No/100 ($1,694,000.00) Dollars.

3. An HUD loan in the amount of One Million and No/100 ($1,000,000.-00) Dollars.

4. An HUD grant in the amount of Six Hundred Ninety Thousand and No/100 ($690,000.00) Dollars.

The federal statutory authority for these grants and loans is as follows:

1. EDA grant. 42 U.S.C. § 3131.
2. FHA loan. 7 U.S.C. § 1926.
3. HUD loan. 42 U.S.C. § 1492.

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HUD grant. 42 U.S.C. § 3102.

The statutes, evidence and applica- will be discussed separately.

-A-

THE PUBLIC WORKS AND ECO-OMIC DEVELOPMENT ACT OF 5 (PUBLIC LAW 89-136, AUGUST 1965, 79 STAT. 552) 42 U.S.C. § 3121 SEQ.

The grant under this Act (hereinafter signated EDA) is bound to the pur- se stated in 42 U.S.C. § 3121.

The Congress declares that the maintenance of the national economy at a high level is vital to the best interests of the United States, but that some of our regions, counties, and communities are suffering substantial and persistent unemployment and underemployment; that such unemployment and underemployment cause hardship to many individuals and their families, and waste invaluable human resources; that to overcome this problem the Federal Government, in cooperation with the States, should help areas and regions of substantial and persistent unemployment and underemployment to take effective steps in planning and financing their public works and economic development; that Federal financial assistance, including grants for public works and development facilities to communities, industries, enterprises, and individuals in areas needing development should enable such areas to help themselves achieve lasting improvement and enhance the domestic prosperity by the establishment of stable and diversified local economies and improved local conditions, provided that such assistance is preceded by and consistent with sound, long-range economic planning; and that under the provisions of this Act new employment opportunities should be created by developing and expanding new and existing public works and other facilities and resources rather than by merely transferring jobs from one area of the United States to

Section 3131 of 42 U.S.C. provides, in part, as follows:

(a) Upon the application of any State, or political subdivision thereof, Indian tribe, or private or public non-profit organization or association representing any redevelopment area *or part thereof*, the Secretary of Commerce . . . is authorized -

(1) to make direct grants for the acquisition or development of land and improvements for public works, public service or development facility usage, and the acquisition, construction, rehabilitation, alteration, expansion, or improvement of such facilities, including related machinery and equipment, within a redevelopment area, if he finds that—

* * * * * *

(B) the project for which a grant is requested will fulfill a pressing need of the area, *or part thereof*, in which it is, or will be, located;

* * *

(f) The Secretary shall prescribe regulations which will assure that appropriate local governmental authorities have been given a reasonable opportunity to review and comment upon proposed projects under this section. [Emphasis added.]

Plaintiff, in brief and oral argument before the court, contends that the Plans for a county-wide system for Edgefield County, as it is presently proposed by the Water Authority contemplates the receipt and use of grant funds from EDA for purposes violative of the Public Works and Economic Development Act of 1965 in the following particulars:

(a). That the Water System as it is presently proposed contemplates expenditure of funds for some facilities to be located in Aiken County in an area not eligible for assistance under the Act.

(b). That the main thrust of the Act is to aid chronically depressed areas in acquiring developmental facilities needed to support their self help efforts to develop more jobs. That the rural

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heart of Edgefield County is such an area but is ignored in the Plans for a County-wide System as it is presently proposed in that the Water Authority failed to consider potential alternate routes through this chronically depressed area.

(c). That, in developing its Plan for a County-wide Water System as presently proposed the Water Authority emphasized economic feasibility rather than need. That such resulted in the Authority distinguishing between alternate routes and areas based upon their relative economic feasibility or ability to pay and that such was improper under the Act.

(d). That in developjng the Plans for a County-wide Water System as presently proposed the Water Authority improperly misplaced the emphasis on acquisition of industry rather than aiding disadvantaged peoples in chronically depressed economic areas as required by the Act.

(e). That the Plans for a County-wide Water System for Edgefield County as it is presently proposed contemplates the location of the intake structure and treatment facility in the Meriwether census division of Edgefield County. That such a location is improper under the Act because this area is rapidly gaining in population. That the Meriwether census division is an urbanizing area and the purposes of the Public Works and Economic Development Act of 1965 is wholly inconsistent with urban development.

(f). That the inclusion of a small portion of Aiken County in the service area of the Water Authority is violative of the purposes of the Act.

(g). That the Plans for a County-wide Water System for Edgefield County, as it is presently proposed by the Water Authority, contemplates the extension of financial assistance to a public service facility which would compete with an existing public utility in violation of 42 U.S.C. § 3131(e).

Each of these contentions is correspondingly catalogued and discussed separately hereinafter:

(a). *Ineligibility of Aiken County for Assistance Under EDA Act.*

Reference to Exhibit P, entitled "General Layout of System" contained in Defendant's Exhibit F, and other testimony of the Engineers, employed by the Water Authority show that the System, as it is presently proposed, contemplates that three small water lines varying in size from six inches to ten inches will be located in that portion of Aiken County contained within the "Service Area" as defined by the Act creating the Water Authority. No testimony was submitted by the plaintiff on the question of whether this portion of Aiken County is eligible for assistance under the EDA Act. There is evidence on behalf of the defendant that representatives of EDA at various levels have reviewed the Plan of the Authority showing the inclusion of this portion of Aiken County and have approved the project. In addition, two Affidavits submitted by Dan B. Mackey Executive Director of the Upper Savannah Development District, are of particular significance on this point:

PERSONALLY appeared before me Dan B. Mackey, who being duly sworn states:

1. That he is and has been during the times herein referred to, the Executive Director, Upper Savannah Planning & Development District which District includes Edgefield County, South Carolina.

* * * * * *

5. That his work has involved him, his office and Board in most EDA grants in the counties of his District and he has personally been familiar with the planning, development, considerations and degree of publicity attendant to each, and in this regard, this

...ed as a part of the record under the agreement of counsel at Pretrial of November 1.

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project of the Edgefield Authority is outstanding. From his careful study, the proposed project is critically needed, well planned, ideally located and will provide an outstanding improvement for the underprivileged, unemployed and marginal economic groups of Edgefield County, and is essential to improving the economic conditions there.

* * * * * *

"The undersigned, Dan B. Mackey, III, being duly sworn, states that he is the Executive Director of the Upper Savannah Development District, and that, as such, he is familiar with the Affairs of the Economic Development Administration of the Department of Commerce. The Economic Development Administration of the Department of Commerce has designated all of Edgefield County as a re-development area. That portion of Aiken County that is included within the service area of the Edgefield County Water and Sewer Authority has been designated by the Economic Development Administration as a part of the growth center area, making it eligible for all assistance available under the Economic Development Administration Program."

[1] This Court finds as a fact that a small portion of the funds contemplated for use under the project will be used to construct water lines in a small area of Aiken County which is included in the "service" area of the Authority. Furthermore, this small area is eligible for assistance under the Public Works and Economic Development Act of 1965. There is no evidence that the Authority included this area for any reason than to support the feasibility of the entire project. The inclusion of a part of Aiken County in the project, under the circumstances was complementary to and in aid of the general purpose, in accordance with the intent of the Act, to give much needed economic development to Edgefield County.

– B –

CONSIDERATION OF ALTERNATIVE ROUTES

The plaintiff's position on this point is that the Water Authority failed to give proper consideration to an alternate route which he advocates.[6] During the testimony the route proposed by the Water Authority was referred to for convenience as the "Highway 25 Route". The route advocated by the plaintiff was referred to for convenience as the "Highway 23 Route". As described above, the Water Authority's Highway 25 Route would run from a point on the Savannah River through the Meriwether and Trenton census divisions in the southern end of Edgefield County along Highway

6. Plaintiff's reply to A's proposed finding and conclusions argues, in part:

> At the outset we must all recognize that it is not controverted that two of the six census division areas of Edgefield County (Edgefield North and Edgefield South) are programmed for water in ten to twenty years, and only, according to the testimony of Emmett Davis "as the area develops and when and if they can financially support a system." One complete census division area of the County (Pleasant Lane) is not even programmed for water at any future time. These three areas, in excess of half of the geographical area of the County, are what have been categorized as the "rural heart" of Edgefield County by the plaintiff.
>
> Likewise, there is no controversy that consistently for the past fifty (50) consecutive years.
>
> While Mr. Davis has predicted a population growth in these areas in 1968, 1969, 1970 and on into the future at about six (6%) percent per year, it did not materialize in 1968, 1969 and 1970 and there is no earthly basis on which anyone could rely which would cause such a reversal of trend without water. The court obviously recognizes this. There is no reason why anyone would want to move into that area of the County. Yet, this county-wide water system is based on that conjecture: that the population would increase and would eventually support a water system.

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to the three towns. The Highway 23 ute proposed by the plaintiff would n several miles to the north at a point the Savannah River in the Clark's Reservoir in McCormick County. It ld then run in an easterly direction the Town of Modoc into the Edge- ith census division and from along Highway 24 to Edgefield and on to Johnston and Trenton. The intiff presented ample evidence that s route runs through a chronically ressed area which has experienced siderable out-migration and an acute tage of water supply. There is little t that property owners along High- 23 would benefit from the location the water line along this route.

One of defendant's witnesses was th Carolina State Director of FHA l Pittman) who testified that the ee agencies had worked together in iewing the project and that FHA had n designated as the lead a, ency by DA and HUD and that he had been des- ated the principal coordinator. He tified that he had attended various tings with representatives of EDA d HUD at which time the Highway 23 ute advocated by the plaintiff was cussed. He testified that additional formation was requested from the gineer on this point and that such in- rmation was furnished by the Engi- r. He further testified that sub- uent to that time the project was ap- oved by the three agencies. He further tified that in applying the criteria tablished by the FHA to the project t FHA and HUD had established a t amortization schedule for their ns which were involved in the project d that, based on this schedule and the teria established by the FHA they d determined that the Authority would e to have an additional One Thousand ,000) water customers to meet the ancial feasibility requirements estab- ed by FHA. He further testified t the Engineers furnished information t the Authority had commitments over One Thousand (1,000)

Route but that there were only One Hundred (100) potential customers along the Highway 24 route. He further testified that a representative of his office verified the fact that only One Hundred (100) potential customers were located along the Highway 23 route. He further testified that a System located along the Highway 24 route would not meet the economic feasibility requirements of FHA and that FHA could not participate in such a project.

The Chief Engineer for FHA (Cecil Rose) testified that additional information had been requested from the Engineer relative to the Highway 23 route proposed by the plaintiff, that such information was furnished by the Engineer and that subsequent to the furnishing of such information the project was approved by the three agencies. He testified that he had met on several occasions with the Chief Engineers of EDA and HUD at which time the project was reviewed in light of the criteria established by the three agencies and subsequently that the project was approved by each of the three agencies.

Emmett Davis, President of the Engineering firm employed by the Water Authority testified that his firm had considered the Highway 23 route advocated by the plaintiff together with another alternate route in the same general area before making a final decision to recommend the Highway 25 route to the Water Authority. He testified that the Highway 25 route would serve Seventy-Five (75%) per cent of the population of Edgefield County in Phase I of the Comprehensive Plan developed by his firm, and that a water line along the Highway 23 route proposed by the plaintiff from Edgefield toward Modoc was scheduled for Phase II of the Comprehensive Plan during the next ten (10) to twenty (20) years as funds become available. He further testified that the Highway 23 route had recently been reviewed by his firm, and a profile and cost analysis developed which indicated that a system developed along this route

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and No. Two (2) wastewater facilities system that a system developed along the Highway 25 route.

Mr. Davis further testified that he had worked on several EDA projects and, as such, had become familiar with the thrust and emphasis of the EDA in applying the Public Works and Economic Development Act of 1965. He testified that their main considerations in providing assistance for water facilities were to provide industrial opportunities in chronically depressed areas and to provide essential public services to disadvantaged persons. He testified that his firm had reviewed the project in light of these considerations and had determined that the Highway 25 route would provide an essential public service to large concentrations of disadvantaged persons along Highway 25 and would provide opportunities for industrial development along the route which would provide employment opportunities accessible to residents of all areas of Edgefield County.

[2] It therefore appears from the credible evidence and the court finds as a fact that the area described by the plaintiff as the "rural heart of Edgefield County" is not ignored in the proposed Water Distribution Plan and that the Highway 23 route proposed by the plaintiff was given proper consideration by the Authority.

The court also finds that the water system, as it is presently proposed by the Water Authority, fulfills the purposes of the Public Works and Economic Development Act of 1965, as set forth in 42 U.S.C. § 3121 and the criteria established by EDA in the administration of that Act.

– C –

CONSIDERATION OF ECONOMIC FEASIBILITY

This project is a cooperative venture of three federal agencies, EDA's contribution by grant under the Public Works and Economic Development Act of 1965 is roughly one-third of the funds necessary to fund the project. Another one-third of the fund comes from a loan from FHA. Representatives of FHA testified rather unequivocally that under economic feasibility criteria established by their agency they required the Authority to obtain a thousand additional customers outside of the three towns. They testified further that the project had reached the maximum grant-to-loan relationship allowable. In other words, lack of economic feasibility could not be remedied merely by substituting grant funds for loan funds as the maximum amount of grant funds had already been utilized. Nothing in the Public Works and Economic Development Act of 1965 is found that would prohibit such a cooperative venture by the EDA, nor do I find any requirement under this Act that a public utility receiving EDA funds choose the least economically feasible alternative available to it.

[3] From the credible evidence the court finds as a fact that the economic feasibility considerations employed by the water authority were required by FHA and that a consideration of such factors does not make the project ineligible for participation by EDA.

– D –

EMPHASIS ON ACQUISITION OF INDUSTRY RATHER THAN AIDING DISADVANTAGED PEOPLES.

[4, 5] Based on the credible evidence the court finds as a fact that promoting industrial opportunities in a chronically depressed economic area, as well as aiding disadvantaged peoples in obtaining basic public services, are both legitimate considerations under the Public Works and Economic Development Act of 1965. The court also finds that large concentrations of disadvantaged persons are located along the Highway 25 route proposed by the water authority and that the water system, as it is presently proposed, will provide basic public services to many of these disadvantaged persons. Further, that opportunities for industrial development will be created along the

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...ity, and that these opportunities ...be accessible to persons living in all ...of Edgefield County and will tend ...minish out-migration from these ...s.

E-

...ECT OF LOCATION OF INTAKE STRUCTURE AND TREATMENT FACILITY IN MERIWETHER CENSUS DIVISION.

...gures contained in Appendix A attached to the plaintiff's brief indicate ...of the six census divisions in Edgefield County, all lost population between 1960 and 1970 Census with the exception of Meriwether, which gained in population from 1,196 to 2,696. A possible explanation for some, if not all, of this population increase is the fact that during the 1960's the Edgefield-Aiken County line was changed to include additional areas in Edgefield County. Assuming, however, that the area is gaining in population, what effect would this fact have upon the eligibility of this project for financial assistance?

[8] It is clear that the Economic Development Act of 1965 has as one of its basic purposes providing assistance to economically depressed areas "suffering substantial and persistent unemployment or under-employment". 42 U.S.C. § 3131. Under 42 U.S.C. § 3131, quoted in part above, the Secretary of Commerce is authorized to make grants to any "private or public nonprofit organization or association representing any development area or part thereof" for "the acquisition or development of land and improvements for public works" if he finds that the project will tend to improve opportunities in the area or establishment of expansion of industrial facilities or otherwise assist in the creation of additional long-term employment opportunities for such area." Under this section the Secretary of Commerce is given considerable discretion. He need find only that the grant applicant represents a redevelopment area and that the effect of the project for which the application is made will assist in the creation of long-term employment opportunities within the area. The fact that a part of the public works project is located in a part of the redevelopment area that is less economically depressed than the remainder of the redevelopment area is of no consequence, nor is it of any consequence that this portion of the redevelopment area may be urbanizing while the remainder is losing in population.

-F-

THE EFFECT OF THE INCLUSION OF A SMALL PORTION OF AIKEN COUNTY IN THE SERVICE AREA OF THE WATER AUTHORITY.

Here, again, there is no merit to the point raised by the plaintiff. 42 U.S.C. § 3131 requires only that the grant applicant represent "any redevelopment area or part thereof." The water authority represents all of one redevelopment area, Edgefield County, and the fact that it also represents a portion of another county is of no consequence.

-G-

COMPETITION WITH OTHER EXISTING PUBLIC UTILITIES.

42 U.S.C. § 3131(e) provides that financial assistance shall not be extended with respect to a public service facility "which would compete with an existing privately owned public utility". Plaintiff appears to rely on the fact that that portion of the service area of the water authority lying in Aiken County is somewhat near the City of North Augusta. Assuming this to be the case and assuming further that North Augusta is serviced by a privately owned public utility, there is no evidence in the record that such a public privately owned public utility has served or has offered to serve or is capable of serving any other area included within the water authority's service area. On the contrary, the General Assembly of the State of South Carolina specifically designated the service area

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of the water authority "to the end that the Authority shall not unduly compete with the existing publicly operated water systems in the county." Act No. 571 of 1957, Section 6, as amended by Act 1192 of 1970.

The court, on the basis of the above, finds that the water system, as it is presently proposed by the water authority, will not compete with any existing privately owned public utility.

THE FHA LOAN

The FHA Loan is authorized under 7 U.S.C. Section 1926[7], which provides as follows:

> The Secretary also is authorized to make or insure loans to associations, including corporations not operated for profit and public and quasi-public agencies, to provide for . . . the conservation, development, use and control of water . . ., all primarily for serving farmers, ranchers, farm tenants, farm laborers, and rural residents, and to furnish financial assistance or other aid in planning projects for such purposes . . .

Both the Chief Engineer for FHA and the State Director for FHA for South Carolina testified that they had carefully reviewed the project and applied the criteria established by FHA in the administration of this Act. They testified that under the criteria established by FHA, loans could be made to finance water facilities in rural areas and in small municipalities having a population of less than 5,500. They both testified that the Towns of Edgefield, Trenton and Johnston each had populations of less than 5,500, and that the remainder of the area serviced by the authority was a rural area eligible for FHA financing. Noteworthy is the fact that the statute particularly emphasizes "the service provided or made available . . . shall not be curtailed or limited by inclusion of the area served . . . within the boundaries of any municipal corporation or other public body."

The court finds as a fact that the plans for a county-wide water system for Edgefield County, as is presently proposed by the water authority, contemplate the receipt and use of a $1,691,000.00 FHA loan for purposes consistent with 7 U.S.C. § 1926 and the criteria established in the administration of this statute by FHA.

HUD LOAN

The HUD loan of $1,000,000.00 is authorized by 42 U.S.C. § 1492 which provides as follows:

> (a) The Secretary of Housing and Urban Development is authorized (1) to purchase the securities and obligations of, or make loans to, municipalities and other political subdivisions and instrumentalities of one or more States (including public agencies and instrumentalities of one or more municipalities or other political subdivisions of one or more States), and Indian tribes to finance specific projects for public works or facilities under State, municipal or other applicable law . . . .
>
> * * * * * *
>
> (c) In the processing of applications for financial assistance under clause (1) of subsection (a) of this section the Secretary shall give priority to applications of smaller municipalities for assistance in the construction of basic public works (including works for the storage, treatment, purification, or distribution of water; sewage, sewage treatment, and sewer facilities; and gas distribution systems) for which there is an urgent and vital public need. As used in this section, a 'smaller municipality' means an incorporated or unincorporated town, or other political subdivision of a State, which had a population of less than ten thousand inhabitants at the time of

7. Entitled: "Water facilities loans to associations; limitation; prohibition against curtailment to services;

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... Notwithstanding any other provision of this chapter, the Secretary ... extend financial assistance, as ... authorized by clause (1) of ... section (a) of this section, to any ... private nonprofit corporation to finance the construction of works for the ... storage, treatment, purification, or distribution of water or the construction ... of sewage, sewage treatment, and sewer facilities, if such works or facilities are needed to serve a smaller municipality or rural area, and there is no existing public body able to construct and operate such works or facilities. Under this statutory authority the Secretary of HUD is authorized to make loans to political subdivisions and instrumentalities to finance specific projects for public works. The Secretary is directed to give priority to applications of small municipalities (less than 10,000 inhabitants) for assistance in the construction of basic public works in which there is an urgent and vital public need.

Mr. Emmett Davis, President of the engineering firm employed by the water authority, testified at length as to the urgent need of the three towns to provide water treatment and distribution facilities both for industrial and residential purposes. The existing situation in the three towns is described in defendant's Exhibit F, Page 5, as follows:

> Changes in the economic structure of Edgefield over the past 20 years has resulted in a migration of the farm population to the urban and suburban areas, placing a burden on the limited public service facilities presently provided by the small municipalities. This migration, although posing a serious threat of exhausting existing sources of raw water and overloading sewage treatment facilities, is providing available manpower favorable to further industrialization. However, adequate supplies of water and other public services are necessary to industrial growth.

Unless measures are taken to improve the public services to accommodate the increase in concentration of population and to facilitate industrial and commercial growth, Edgefield County faces a period of unusually high unemployment rates or considerable out-migration.

Dan B. Mackey, Executive Director of the Upper-Savannah Planning and Development District, in Paragraph 5 of his Affidavit, dated August 31st, 1971, states that:

> From his careful study, the proposed project is critically needed, well-planned, ideally located and will provide an outstanding improvement for the underprivileged, unemployed and marginal economic groups of Edgefield County, and is essential to improving the economic conditions there.

As each of the Towns of Edgefield, Johnston and Trenton has a population of less than 10,000 inhabitants, each would come within the "smaller municipality" category of 42 U.S.C. § 1492 and would be entitled to priority under that section. Consequently, the court makes the following:

FINDING OF FACT

The county-wide water system for Edgefield County, as it is presently proposed by the water authority, contemplates the receipt and use of an HUD loan to finance basic public works in smaller municipalities for which there is an urgent and vital public need consistent with the requirements of 42 U.S.C. § 1492.

HUD GRANT

The HUD Grant of $690,000.00 is authorized by 42 U.S.C. § 3102 which provides as follows:

> The Secretary of Housing and Urban Development . . . is authorized to make grants to local public bodies and agencies to finance specific projects for basic public water fa-

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cilities (including works for the storage, treatment, purification, and distribution of water) . . .

The court finds as a fact that the plans for a county-wide water system for Edgefield County, as it is presently proposed by the water authority, contemplates the receipt and use of an HUD Grant to finance its specific project for basic public water facilities in compliance with the requirements of 42 U.S.C. § 3102.

CONCLUSIONS OF LAW

[9] Having thoroughly reviewed each of the arguments put forward by the plaintiff, it clearly appears that they have no merit. In order to be entitled to an injunction, the plaintiff has the burden of proving a clear case, reasonably free from doubt.

> The extraordinary character of the injunctive remedy and the danger that its use in improper cases may result in serious loss or inconvenience to an innocent party require that the power to issue it should not be likely indulged in, but should be exercised sparingly and cautiously, after thoughtful deliberation, and with full conviction on the part of the court of its urgent necessity. In other words, the relief should be awarded only in clear cases, reasonably free from doubt, and when necessary to prevent great and irreparable injury. The complainant has the burden of proving the facts which entitle him to relief. 42 Am.Jur.2d, Injunctions, Section 26.

[10] In addition, this court must consider the tremendously damaging effect that the granting of an injunction in this case would have upon the public interest:

> The paramount interests of the public may have some bearing on the matter of granting injunctive relief to protect private rights. The fact that an important public interest would be prejudiced by an injunction may be a compelling reason for denying relief. The court . . . will at least furnish a court of equity sufficient ground for exercising a discretion to refuse the remedy, and the court will generally do so [where] in the public interest where it reasonably appears that the private rights will not suffer by the refusal of the injunctive order, where the damage to the complainant from denying the injunction will be slight, where the right invaded is merely a technical or unsubstantial one, or where the injury is one which can readily be compensated in damages, whereas the issuance of the order may or would occasion public inconvenience . . . 42 Am.Jur.2d, Injunctions, Section 59.

[11] The matters complained of by the plaintiff relate to the exercise of judgment or discretion by executive departments of the federal government and by the duly appointed members of the Edgefield County Water and Sewer Authority. In such a case, the general rule is that injunctive relief should be denied and that the court should not attempt to substitute its judgment for that of the public official involved even if such judgment appears to be unwise, short of a showing of fraud, illegality or oppression.

> . . . Equity will not attempt by injunction to substitute its own discretion for that of such officials in matters belonging to their proper jurisdiction. The courts cannot by injunctive process control or direct a head of an executive department in the discharge of any constitutional executive duty involving the exercise of judgment or discretion. The prevention of irreparable injury and of a multiplicity of suits cannot be invoked as grounds for equitable relief in such cases. Where a public officer essays to exercise the jurisdiction conferred upon him, his errors, although subject to subsequent correction, cannot be enjoined as an arbitrary exercise of his authority. Particularly will courts hesitate to interfere by injunction where the acts complained of are . . .

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...fact, it may ...stated as an established rule that injunction will issue against public officers only to prevent a breach of trust affecting public franchises, or some illegal act under color or claim of right injurious to the property or other rights of individuals or the public, or where serious injury will result to private individuals without corresponding public benefit.

A mandatory injunction may be an appropriate remedy to compel affirmative acts by public corporations and officers where the urgency for such relief is great and the legal remedy inadequate, or where the controversy is between a county and an officer whose duty it is to perform a ministerial act, but it will not issue to control the exercise of discretionary acts. 42 Am. Jur.2d, Injunctions, Section 175.

With regard to injunctive relief against the acts of public officials, boards, or agencies, a distinction is made between those acts which require the exercise of discretion or judgment and those which are purely ministerial. With respect to the former, there exists no power to control the executive discretion, however erroneous its exercise may seem to have been . . . 42 Am.Jur.2d, Injunctions, Section 180.

There is a class of cases which hold that if a public officer be required by law to do a particular thing, not involving the exercise of either judgment or discretion, he may be required by law to that thing upon application of one having a distinct legal interest in the doing of the act. Such an act would be ministerial only. But if the matter in respect to which the action of the official is sought is one in which the exercise of either judgment or discretion is required, the courts will refuse to substitute their judgment or discretion for that of the official intrusted by law with its execution. Interference in such a case would be to interfere with the ordinary functions of government. State of Louisiana v. McAdoo, 234 U.S. 627, 34 S.Ct. 938, 58 L.Ed. 1506 (1914).

The general rule is that the courts will not interfere by injunction with the exercise of discretionary powers conferred by the state upon municipalities, and will not restrain the action of a municipal corporation acting through its duly appointed officers merely because such action may be unwise, extravagant, or a mistake of judgment. It is only where the action complained of is illegal, fraudulent, or clearly oppressive that equity will act to restrain it . . . . 42 Am.Jur 2d, Injunctions, Section 180.

LACHES

[12] There was evidence that the plaintiff had been given a copy[3] of the Comprehensive Plan almost three (3) years before the institution of this action. The substance of the Water System now proposed by the Water Authority is set forth therein.

Appendix B of plaintiff's brief is an Affidavit by Ken Kilbourne which states that an advertisement of a public meeting pertaining to the Plans of the Water Authority was run in the *Edgefield Advertiser* on April 22 and April 29, 1970, giving notice of a meeting to be held at the Edgefield County Courthouse on April 30, 1970 at 4:30 P.M. The plaintiff is the Editor of the *Edgefield Advertiser*.

It is well established principle that 'equity aids the vigilant'; relief in that tribunal is confined to those who manifest reasonable diligence in asserting their rights and demanding equitable protection, and will be denied to those who sleep upon their rights to the prejudice of the party against whom relief is asked. The principle has peculiar force when the injunctive power of the court is invoked. Laches

...ney of Representative Butler C. ...ber of the South Carolina House of Representatives from Edgefield County.

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or inexcusable delay will not be countenanced when this special form of relief is sought. Consequently, the remedy by way of injunction will not generally be granted in favor of one who, with full knowledge of what is being done or with means of acquiring such knowledge, is acquiescent, or delays in asserting, or neglects to assert, his rights until the defendant has placed himself in a position from which he is unable to extricate himself without great injury or damage . . . . 42 Am.Jur.2d, Injunctions, Section 61.

Based on the above, the court finds that the plaintiff is guilty of laches and unreasonable delay in waiting until August of 1971 to institute this action.

For this reason, in addition to the reasons heretofore stated, defendant should prevail.

There is ample evidence in the record of the damaging effect of the pendency of this action upon this project:

"That if such project is delayed or blocked, such will tend to hazard the eventual availability of funds, since timing is very important relative to availability. No one can say with certainty the impact of considerable delay by reason of litigation, but such delay would present a real potential hazard to ultimate availability." Affidavit of Dan B. Mackey, paragraph 6.

The plaintiff appears to agree on this point, reference being made to the last paragraph of the plaintiff's brief.

A delay of a few months would certainly be costly to the project. A delay of even a few years in getting a water system planned for the rural areas, and an eventual delivery of water completed would be fatal to Edgefield County. The people will have all moved away; the County would have died.

JUDGMENT

The request of plaintiff for a restrain- ported on the face of the [illegible] should be denied.

The Complaint is dismissed [illegible]

The Clerk shall enter judgment accordingly.

And it is so ordered.

Jewel Lee GOLDSBERRY, Plaintiff

v.

FORD MOTOR COMPANY et al.
Defendants.

No. 71-C-324.

United States District Court,
E. D. Wisconsin.

May 26, 1972.

Proceeding on motion to transfer personal injury suit. The District Court, Myron L. Gordon, J., held that where automobile accident which was subject of suit for personal injuries occurred in Arkansas while automobile was being driven by the host, a Kansas resident, and the only contact with Wisconsin was plaintiff's residence in state, diversity action would be transferred to the Eastern District of Arkansas since it was apparent that the convenience of witnesses would be better accommodated by a trial there.

Motion to transfer granted.

1. Courts ⇐277.1

Where automobile accident which was subject of suit for personal injuries occurred in Arkansas while automobile was being driven by the host, a Kansas resident, and the only contact with Wisconsin was plaintiff's residence in state, diversity action would be transferred to the Eastern District of Arkansas since it was apparent that the convenience of witnesses would be better accommodated

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COUNTY OF RICHLAND

PERSONALLY APPEARED before the undersigned Notary Public for the State of South Carolina, STANLEY KOHN, who first being duly sworn, deposes and says that he is the Attorney for the Appellants in the herein matter; that he served two copies of the herein Petition for Writ of Certiorari upon the Attorneys for the Appellees on the 4th day of October, 1972 by placing said copies in the United States mail, with sufficient postage affixed and addressed as follows:

HOWARD L. BURNS, Esquire
J. KENDALL FEW, Esquire
Post Office Box 1207
Greenwood, South Carolina 29646

Stanley H. Kohn
STANLEY H. KOHN

Sworn to and subscribed
before me this 4th day
of October, 1972.

_____(LS)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires July 25, 1982

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Supreme Court, U. S.
FILED
OCT 5 1972
MICHAEL RODAK, JR., CLERK

Supreme Court Of The United States

OCTOBER TERM, 1972

No. 72-554

WALTON W. MIMS, individually and as a representative of a class of citizens composed of residents and taxpayers of a common geographical subdivision,

Appellants,

versus

W. G. YARBOROUGH, FRANK COOPER, H. B. KEMP, CRAFTON TIMMERMAN and J. O. BUSSEY, all as members of the Edgefield County Water and Sewer Authority,

Appellees.

APPENDIX

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KOHN & FINKEL, *Attorneys*
1408 Bull Street
Columbia South Carolina 29201
(803) 765-2935

GERALD M. FINKEL
OF COUNSEL:

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UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 72-1013

Walton W. Nims, individually and as a representative of a class of citizens composed of residents and taxpayers of a common geographical subdivision,

Appellant,

versus

W. G. Yarborough, Frank Cooper, H. B. Kemp, Crafton Timmerman and J. O. Bussey, all as members of the Edgefield County Water and Sewer Authority, and United States Army Corps of Engineers,

Appellees.

Appeal from the United States District Court for the District of South Carolina, at Greenwood. Robert W. Hemphill, District Judge.

Argued May 11, 1972. Decided June 6, 1972.

Per Curiam:

For the reasons stated by the District Judge, we find no inconsistency between the plans for this water distribution system and the requirements of the federal statutes under which loans and grants have been authorized to finance its construction. Nims v. Yarborough, D.S.C., ____ F.Supp. ____

Affirmed.

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UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 72-1013

Walton W. Mims, individually and as a representative of a class of citizens composed of residents and taxpayers of a common geographical subdivision,

Appellants,

versus

W. G. Yarborough, Frank Cooper, B. B. Kemp, Crafton Timmerman and J. O. Bussey, all as members of the Edgefield County Water and Sewer Authority, and United States Army Corps of Engineers,

Appellees.

ORDER

After careful consideration of appellant's petition for rehearing, and with the concurrences of Judge Winter and Judge Field, the petition is denied.

FOR THE COURT:

Clement F. Haynsworth, Jr.
Chief Judge, Fourth Circuit

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT OF SERVICE

PERSONALLY APPEARED before the undersigned notary public for the State of South Carolina, STANLEY H. KOHN, who first being duly sworn, deposes and says that he is the Attorney for the Appellants in the herein matter; that he served two copies of the herein Appendix upon the Attorneys for the Appellees on the 10th day of October, 1972 by placing said copies in the United States mail, with sufficient postage affixed and addressed as follows:

HOWARD L. BURNS, Esquire
J. KENDALL FEW, Esquire
Post Office Box 1207
Greenwood, South Carolina 29646

SWORN to and subscribed
before me this 10th dav
of October, 1972.

Stanley H. Kohn
STANLEY H. KOHN

Mary M. Wright (LS)
NOTARY PUBLIC FOR SOUTH CAROLINA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-554

WALTON W. MIMS, INDIVIDUALLY AND AS A REPRESENTATIVE OF A CLASS OF CITIZENS COMPOSED OF RESIDENTS AND TAXPAYERS OF A COMMON GEOGRAPHICAL SUBDIVISION, PETITIONERS,

versus

W. G. YARBOROUGH, FRANK COOPER, H. B. KEMP, CRAFTON TIMMERMAN AND J. O. BUSSEY, ALL AS MEMBERS OF THE EDGEFIELD COUNTY WATER AND SEWER AUTHORITY, RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

Respondent accepts, for purposes of this Brief in Opposition, the material in the Petition for *Certiorari* under the headings, "Opinion Below" and "Jurisdiction".

STATUTES INVOLVED

The statutes involved are fully set forth in the Petition for *Certiorari*, pages 4 through 16, with the exception of 42 U. S. C. § 3102 which is set out in the opinion of the District Court attached to the Petition for *Certiorari* as an exhibit at 343 F. Supp. pages 1160-61 and applicable provisions of Act No. 571 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina for 1971 which are set out in the opinion of the District Court at 343 F. Supp. pages 1149-50.

QUESTIONS PRESENTED

1. Whether the Supreme Court should grant *certiorari* to review the exercise of discretion by the Edgefield County Water and Sewer Authority in locating a water line along a different route than that advocated by the petitioner.

2. Whether the decision of the District Court concurred in by the Court of Appeals that the Water Authority's proposed distribution system is in compliance with the applicable federal statutes is supported by the evidence.

STATEMENT

The facts of the case are stated fully in the opinion of the District Court attached to the Petition for *Certiorari*, 343 Fed. Supp. pages 1148 through 1153.

ARGUMENT

1. The decisions below involve questions of fact and not of law.

The District Court's decision was based upon the following findings of fact set forth in the opinion:

> "It therefore appears from the credible evidence and the court finds as a fact that the area described by the plaintiff as the 'rural heart of Edgefield County' is not ignored in the proposed Water Distribution Plan

and that the Highway 23 route proposed by the plaintiff was given proper consideration by the Authority.

"The court also finds that the water system, as it is presently proposed by the Water Authority, fulfills the purposes of the Public Works and Economic Development Act of 1965, as set forth in 42 U. S. C. § 3121 and the criteria established by EDA in the administration of that Act." 343 F. Supp. 1157.

"From the credible evidence the court finds as a fact that the economic feasibility considerations employed by the water authority were required by FHA and that a consideration of such factors does not make the project ineligible for participation by EDA." 343 F. Supp. 1157.

"... The court also finds that large concentrations of disadvantaged persons are located along the Highway 25 route proposed by the water authority and that the water system, as it is presently proposed, will provide basic public services to many of these disadvantaged persons. Further, that opportunities for industrial development will be created along the Highway 25 route proposed by the water authority, and that these opportunities will be accessible to persons living in all areas of Edgefield County and will tend to diminish out-migration from these areas." 343 F. Supp. 1157-58.

"The court finds as a fact that the plans for a county-wide water system for Edgefield County, as is presently proposed by the water authority, contemplate the receipt and use of a $1,694,000.00 FHA loan for purposes consistent with 7 U. S. C. § 1926 and the criteria established in the administration of this statute by FHA." 343 F. Supp. 1159.

"FINDING OF FACT

"The county-wide water system for Edgefield County, as it is presently proposed by the water authority, contemplates the receipt and use of an HUD loan to finance basic public works in smaller municipalities for which there is an urgent and vital public

need consistent with the requirements of 42 U. S. C. § 1492." 343 F. Supp. 1160.

"The court finds as a fact that the plans for a county-wide water system for Edgefield County, as it is presently proposed by the water authority, contemplates the receipt and use of an HUD Grant to finance its specific project for basic public water facilities in compliance with the requirements of 42 U. S. C. § 3102." 343 F. Supp. 1161.

The Court of Appeals concurred in these findings of fact by the District Court.

"PER CURIAM: For the reasons stated by the District Judge, we find no inconsistency between the plans for this water distribution system and the requirements of the federal statutes under which loans and grants have been authorized to finance its construction. *Mims v. Yarborough*, D. S. C., 343 F. Supp. 1146. Affirmed." 461 F. (2d) 1266.

It is well settled that a Superior Court on Writ of *Certiorari* will confine its review to the correction of errors of law only and will not review the findings of fact of an inferior court except when such findings are entirely without support in the evidence. *City of Columbia v. South Carolina Public Service Commission*, 242 S. C. 528, 131 S. E. (2d) 705 (1963; *Jacoby v. South Carolina State Board of Naturopathic Examiners*, 219 S. C. 66, 64 S. E. (2d) 138 (1951); *Pettiford v. South Carolina State Board of Education*, 218 S. C. 322, 62 S. E. (2d) 780 (1950).

". . . the evidence may be brought up, not for the purpose of weighing it, to ascertain the preponderance, but merely to ascertain whether there was any evidence at all to sustain the decision of the inferior tribunal. . . ." *State of Minnesota v. State Board of Education*, 6 N. W. (2d) 251, 143 A. L. R. 503 (Sup. Ct. Minn. 1942).

". . . a writ of *certiorari* will not lie to enable a superior court to pass upon, revise or reverse the decision of a lower tribunal as to matters of fact. [Citations omitted]. We believe that there are no cases to the contrary." *Drumheller v. Berks County Local Board No. 1,* 130 F. (2d) 610 (3rd Cir. 1942).

"Likewise we accept the concurrent judgment of the lower courts [on this question] . . . . [This question] depended upon an appreciation of the peculiar facts presented, and the rule is well settled that in such circumstances, where two courts have agreed, we will not enter upon a minute analysis of the evidence." *Boehmer v. Pennsylvania Railroad Co.,* 252 U. S. 496, 498, 40 S. Ct. 406, 64 L. Ed. 680, 684 (1920).

". . . A finding or decision of the inferior tribunal, within its jurisdiction, on facts supported by competent and substantial evidence, is binding on the reviewing court and will not be reviewed by it, particularly where the finding or decision has been concurred in by the trial court and an intermediate appellate court, or where it is against a party who does not bring *certiorari.*" 14 C. J. S. *Certiorari,* § 172, pages 312-13.

That the findings of the District Court, concurred in by the Court of Appeals, are supported by substantial evidence, is shown by the following evidence quoted or summarized in the District Court's opinion:

"Dan B. Mackey, Executive Director of the Upper-Savannah Planning and Development District, in Paragraph 5 of his Affidavit, dated August 31st, 1971, states that:

> 'From his careful study, the proposed project is critically needed, well-planned, ideally located and will provide an outstanding improvement for the underprivileged, unemployed and marginal economic groups of Edgefield County, and is essential to improving the economic conditions there.'" 343 F. Supp. 1160.

". . . The Economic Development Administration of the Department of Commerce has designated all of Edgefield County as a re-development area. That portion of Aiken County that is included within the service area of the Edgefield County Water and Sewer Authority has been designated by the Economic Development Administration as a part of the growth center area, making it eligible for all assistance available under the Economic Development Administration Program." Affidavit of Dan B. Mackey, 343 F. Supp. 1155.

"The Chief Engineer for FHA (Cecil Rose) testified that additional information had been requested from the Engineer relative to the Highway 23 route proposed by the plaintiff, that such information was furnished by the Engineer and that subsequent to the furnishing of such information the project was approved by the three agencies. He testified that he had met on several occasions with the Chief Engineers of EDA and HUD at which time the project was reviewed in light of the criteria established by the three agencies and subsequently that the project was approved by each of the three agencies." 343 F. Supp. 1156.

"Emmett Davis, President of the Engineering firm employed by the Water Authority testified that his firm had considered the Highway 23 route advocated by the plaintiff together with another alternate route in the same general area before making a final decision to recommend the Highway 25 route to the Water Authority. He testified that the Highway 25 route would serve Seventy-Five (75%) per cent of the population of Edgefield County in Phase I of the Comprehensive Plan developed by his firm, and that a water line along the Highway 23 route proposed by the plaintiff from Edgefield toward Modoc was scheduled for Phase II of the Comprehensive Plan during the next ten (10) to twenty (20) years as funds become available." 343 F. Supp. 1156.

"Mr. Davis further testified that he had worked on several EDA projects and, as such, had become

familiar with the thrust and emphasis of the EDA in applying the Public Works and Economic Development Act of 1965. He testified that their main considerations in providing assistance for water facilities were to provide industrial opportunities in chronically depressed areas and to provide essential public services to disadvantaged persons. He testified that his firm had reviewed the project in light of these considerations and had determined that the Highway 25 route would provide an essential public service to large concentrations of disadvantaged persons along Highway 25 and would provide opportunities for industrial development along the route which would provide employment opportunities accessible to residents of all areas of Edgefield County." 343 F. Supp. 1157.

"Both the Chief Engineer for FHA and the State Director for FHA for South Carolina testified that they had carefully reviewed the project and applied the criteria established by FHA in the administration of this Act. They testified that under the criteria established by FHA, loans could be made to finance water facilities in rural areas and in small municipalities having a population of less than 5,500. They both testified that the Towns of Edgefield, Trenton and Johnston each had populations of less than 5,500, and that the remainder of the area serviced by the authority was a rural area eligible for FHA financing." 343 F. Supp. 1159.

"Mr. Emmett Davis, President of the Engineering firm employed by the water authority, testified at length as to the urgent need of the three towns to provide water treatment and distribution facilities both for industrial and residential purposes." 343 F. Supp. 1160.

"As each of the Towns of Edgefield, Johnston and Trenton has a population of less than 10,000 inhabitants, each would come within the smaller municipality category of 42 U. S. C. § 1942 and would be entitled to priority under that section." 343 F. Supp. 1160.

2. The actions sought to be reviewed are discretionary acts of administrative agencies.

The District Court noted this fact in its opinion in the following manner:

> "The matters complained of by the plaintiff relate to the exercise of judgment or discretion by executive departments of the federal government and by the duly appointed members of the Edgefield County Water and Sewer Authority. . . ." 343 F. Supp. 1161.

Certiorari should not be invoked to review acts which are merely ministerial, executive, or administrative or to test the proper exercise of discretion vested in a public official or administrative board. 14 *Am. Jur.* (2d) *Certiorari* § 18, 20; *Drumheller v. Berks County Local Board No. 1*, 130 F. (2d) 610 (3rd Cir. 1942); *Wyse v. Wolfe*, 129 S. C. 499, 123 S. E. 818 (1924).

> "Some attention might be given here to the apparent assumption upon which this petition for *certiorari* proceeds—that every act of an administrative board involving the exercise of sound judgment and discretion must be submitted to court review on the theory that the act is judicial. It is not expected that the law will be administered by robots. It is inevitable that in following the ordinary procedure imposed upon them by statute, boards of this kind must perform some acts not purely ministerial, make some decisions to which sound judgment and discretion must be applied. . . . The simple fact that the result is reached by similar processes of reason, common to all men, does not expropriate the exercise of these facilities to the judiciary. . . ." *Belk Department Store, Inc. v. Gilford County*, 222 N. C. 551, 23 S. E. (2d) 897, 902 (1943).
>
> " 'At common law and under the practice in most jurisdictions, the writ of *certiorari* will lie to review only those acts which are judicial or *quasi* judicial in their nature. It does not lie to review or annul any judgment or proceeding which is legislative, executive,

or ministerial rather than judicial. The writ does not lie to review the action of an inferior tribunal or board in the exercise of purely legislative functions.' 10 *Am. Jur., Certiorari:* § 10; 14 *C. J. S. Certiorari* 18b." *In Re Markham*, 250 N. C. 566, 131 S. E. (2d) 329, 332 (1963).

A contrary rule would prolong federal actions to such an extent as to seriously interfere with the proper functioning of local, state and federal administrative agencies in the exercise of such important functions as the locating of highways, public buildings, dams, waste treatment plants, water lines and other essential public facilities. To require a review of the location of these projects beyond the federal district and appellate court level would cause such extended delays as to be disruptive of the administrative process and burdensome to the public.

3. The question set out in the petitioner's writ is an abstract, hypothetical question not supported by the record.

The question posed in the petitioner's writ at page 4 is as follows:

> "Can a proposed water system as funded by four Federal Acts be planned so as to violate specific sections of one or more of those Federal Acts and the intent of Congress in regard thereto?"

Based on substantial evidence the District Court found that the proposed water system as planned by the Water Authority did **not** violate any of the four Federal Acts. The Court of Appeals concurred. (See point 1 discussed above.) Thus it appears that the question posed is an abstract question not supported by the record. The Supreme Court should defer consideration of this question for a case where the planned water system actually involves the violation of some Federal Act.

> ". . . The writ will not issue merely to give an opportunity to determine abstract, academic, hypothe-

tical, or moot questions, even though such a determination would be of public interest. . . ." 14 *C. J. S. Certiorari* § 32, page 177.

". . . We granted *certiorari* to consider the important question of the extent to which such exceptions may permit warrantless searches without violation of the Fourth Amendment. A closer examination of the record than was possible when *certiorari* was granted reveals that the facts do not appear with sufficient clarity to enable us to decide that question. . . ." *Gilbert v. California*, 388 U. S. 263, 269, 87 S. Ct. 1951, 18 L. Ed. (2d) 1178, 1184 (1967).

". . . Thus, it now appears respondents have documentary evidence that the actual facts simply do not present the issue for which *certiorari* was granted by us.

". . . this court . . . [has] unwittingly been placed in the unfortunate posture of addressing a situation that does not exist.

"In this state of affairs we decline to adjudicate this case. Were we to pass upon the purely artificial and hypothetical issue tendered by the petition for *certiorari* we would not only in effect be rendering an advisory opinion but also lending ourselves to an unjustifiable intrusion upon the time of this court. Accordingly, the writ of *certiorari* is dismissed as improvidently granted." *Conway v. California Adult Authority*, 396 U. S. 107, 109-10, 90 S. Ct. 312, 24 L. Ed. 295, 298, reh. den., 396, U. S. 1030, 90 S. Ct. 544, 24 L. Ed. (2d) 527 (1969).

4. The question set forth in the petitioner's writ constitutes a general allegation of error in which the particular errors complained of are not clearly set forth.

The question set forth in the petitioner's writ at page 4 asks whether a water system can be so planned "as to violate specific sections of one or more federal acts." It does not identify what aspects of the planned water system are in violation of the acts nor the specific sections

that such actions are alleged to violate. See 14 *C. J. S. Certiorari* § 72, page 215. This type of question has been characterized as "broadside." *Harris v. Carolina Power and Light Co.*, 243 N. C. 438, 90 S. E. (2d) 694.

> ". . . In order to review His Honor's ruling . . . it would be necessary for this court to perform a mapping operation undertaking a 'voyage of discovery' through the record. We will do neither. . . ." *Williams v. Williams*, 261 N. C. 48, 134 S. E. (2d) 227, 231 (1964).
>
> ". . . In the petition before us, the ruling complained of is set out, but no specific assignment of error is made on this ruling. This does not meet the requirements of the rule. The petition must set out a specific ruling and assign error thereon. . . ." *McConley v. State*, 220 Ga. 377, 139 S. E. (2d) 292, 293 (1964).
>
> "The assignments of error are upon the general grounds only. The evidence supports the verdict. The court did not err in dismissing the *certiorari*." *Wright v. State*, 7 S. E. (2d) 292 (Ct. App. Ga. 1940).

5. The granting of certiorari will result in great public detriment and inconvenience.

There is evidence in the record, quoted in the opinion of the District Court, that:

> ". . . The proposed project is critically needed, well planned, ideally located and will provide an outstanding improvement for the underprivileged, unemployed and marginal economic groups of Edgefield County, and is essential to improving the economic conditions there." 343 F. Supp. 1160.

While litigation is pending against the Water Authority, the Authority cannot issue the bonds necessary to finance the project because prospective bond buyers will not purchase bonds without a no litigation certificate. Consequently, the project has been delayed for more than a year since the filing of the Complaint in this action on Au-

gust 26, 1971 (see the "chronology" of the District Court at 343 F. Supp. 1150-51). If *certiorari* is granted, it will result in further delays and greater detriment and inconvenience to the people of Edgefield County.

The District Court noted the damaging effect of the pendency of this action:

> "In addition, this court must consider the tremendously damaging effect that the granting of an injunction in this case would have upon the public interest. . . ." 343 F. Supp. 1161.
>
> "There is ample evidence in the record of the damaging effect of the pendency of this action upon this project:
>
> > 'That if such project is delayed or blocked, such will tend to hazard the eventual availability of funds, since timing is very important relative to availability. No one can say with certainty the impact of considerable delay by reason of litigation, but such delay would present a real potential hazard to ultimate availability.' Affidavit of Dan B. Mackey, paragraph 6.
>
> "The plaintiff appears to agree on this point, reference being made to the last paragraph of the plaintiff's brief.
>
> > 'A delay of a few months would certainly be costly to the project. A delay of even a few years in getting a water system planned for the rural areas, and an eventual delivery of water completed would be fatal to Edgefield County. The people will have all moved away; the County would have died.' " 343 F. Supp. 1163.

There is considerable authority for the proposition that a writ of *certiorari* may be dismissed on the ground that public detriment will result. *Drumheller v. Berks County Local Board No. 1*, 130 F. (2d) 610, 612 (3d Cir. 1942); *In Re Markham*, 259 N. C. 566, 131 S. E. (2d) 329, 332 (1963).

"Where great public detriment or inconvenience would result or might have resulted from interferring with the proceedings of public bodies which exercise rights in which the people at large are concerned, and no substantial injury would result from its refusal, the writ has been denied, and its allowance in such cases is discretionary. Thus, in a case where the allowance of the writ would perhaps suspend for a considerable period of time the prosecution of a great public work of prime necessity to a large number of persons, the discretion lodged in a superior court in the matter of the allowance of the prerogative writ should be sparingly exercised." 14 *C. J. S. Certiorari* § 13, page 141.

6. There is no conflict with the decisions of this court or of other Circuit Courts of Appeals.

The decisions below are clearly correct and supported by substantial evidence. The petitioner does not cite any decision of this Court or of the other Circuit Courts of Appeals, nor does the petitioner assert that the decisions below are in conflict therewith. Manifestly, there is no important question of law requiring review by this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a writ of *certiorari* should be denied.

Respectfully submitted,

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